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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Defendant Universal Life Church Monastery Storehouse, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE
MINISTRIES,
Opposer,

v.

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE, INC.
Applicant.

Opposition No. 91237315

ULC MONASTERY’S REPLY IN
SUPPORT OF MOTION TO RE-OPEN
DISCOVERY TO RESPOND TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT

I. INTRODUCTION

Opposer American Marriage Ministries (“AMM”) fundamentally misrepresents the facts and the argument made by Applicant Universal Life Church Monastery Storehouse (“ULC Monastery”) in its Opposition (Dkt. No. 25) to ULC Monastery’s motion to re-open limited discovery. Despite its attempts at misdirection, AMM’s brief cannot negate these simple facts: (1) AMM did not search for or produce certain responsive documents until after discovery closed; (2) AMM would not discuss deficiencies in its late-produced documents until after it filed its summary judgment motion; (3) AMM relies on its own use and third-party use of the term “get ordained” in support of its summary judgment motion; and (4) AMM’s late-produced documents show that AMM coordinated its own use and third-party use of the term “get ordained” to create evidence purportedly supporting its legal argument. Against this background, it would be fundamentally unfair to prevent ULC Monastery from taking discovery regarding AMM’s late-produced documents and its attempts to engineer evidence supporting its motion for summary judgment.

II. ARGUMENT

AMM's opposition brief misrepresents the facts and procedural history, its own summary judgment motion, and ULC Monastery's argument in support of authorizing limited additional discovery. AMM does not and cannot negate the fact that its summary judgment motion relies on evidence and factual assertions that are undermined by late-produced documents, and that ULC Monastery could not have taken discovery on such documents or their content during the discovery period.

A. AMM Withheld Documents Until After Discovery and Delayed Discussion Until After it Filed its Summary Judgment Motion

AMM's brief attempts to mislead the Board regarding three crucial aspects of the facts and procedural history: (1) AMM withheld documents it was obligated to produce until after the close of discovery, (2) ULC Monastery could not possibly have conducted discovery regarding such documents or their content during the discovery period, and (3) AMM refused to discuss deficiencies in its late production until after it filed a summary judgment motion. Based on these facts, it would be unjust to allow AMM to escape discovery regarding its late-produced documents and the content thereof.

First, in its opposition brief, AMM states that the responsive documents that it withheld were not created until after the start of litigation, as if that somehow justifies its failure to produce such documents. (Opp., Dkt. No. 25, at 2.) AMM claims that its eventual production of documents was a mere "courtesy" to ULC Monastery. (*Id.* at 10.) This is nonsense. Federal Rule of Civil Procedure 26(e)(1)(A) requires litigants to supplement incomplete responses to requests for production in a timely manner. AMM's failure to search for and produce responsive documents from its Slack and Pivotal Tracker communications platform until after the close of discovery is a violation of this obligation, regardless of when those documents were generated.

Second, AMM’s brief misleadingly claims that ULC Monastery could have conducted its desired discovery all along, but simply failed to do so. (*Id.* at 7, 15.) This is both an impossibility and a meritless argument. It is, of course, obvious that ULC Monastery could not have taken discovery during the discovery period regarding documents that AMM withheld until after the discovery period. ULC Monastery attempts to distract the Board from this simple truth by arguing that ULC Monastery had ample opportunity to take discovery regarding the broad category of “how members of the relevant public use and/or understand the phrase ‘get ordained’” (*Id.* at 7), while ignoring the specific late-produced documents and their content at issue.

This argument, if accepted, would allow any litigant to withhold smoking-gun evidence until after the close of discovery and thereby deny follow-up discovery on the evidence. For example, a defendant in a trademark infringement suit could withhold correspondence showing actual consumer confusion until after the close of discovery, and then deny any opportunity to ask questions about such correspondence by arguing that the plaintiff already had “ample opportunity” to take discovery regarding likelihood of confusion. This, of course, would be an absurd result and it is a result the Board should reject.

Third, AMM fundamentally misrepresents the timeline of the parties’ discovery dispute in an attempt to disguise its delay tactics. ULC Monastery’s counsel identified deficiencies in AMM’s late-produced documents and sought to meet and confer on February 18, 2019. (Dkt. No. 24 at 3; Dkt. No. 25 at 3). Yet, AMM claims in its Opposition that, “[w]hile the parties worked to informally address this discovery dispute, AMM prepared a Motion for Summary Judgment, which it filed on February 28, 2019.” (Dkt. No. 25 at 3.) This is simply not true. AMM did not respond to the February 18, 2019 email of ULC Monastery’s counsel, and refused

to meet and confer until after it filed its summary judgment motion. AMM's own timeline of events confirms this. (Dkt. 25 at 3.)

B. AMM's Late-Produced Documents are Directly Relevant to AMM's Summary Judgment Motion

AMM's late-produced documents undermine evidence cited in AMM's summary judgment motion regarding (1) third-party use of "get ordained" and (2) AMM's own use of "get ordained." AMM's opposition brief misrepresents both its own summary judgment motion as well as ULC Monastery's arguments in attempting to deny ULC Monastery discovery into such late-produced documents and the content thereof. As discussed in ULC Monastery's motion, AMM's late-produced documents indicate that AMM pays and coordinates with third party websites to use AMM's preferred terminology when discussing AMM's services. (Dkt. No. 24 at 6-7.) In its brief, AMM characterizes this as a mere "speculative hope." (Dkt. No. 25 at 8.) However, ULC Monastery recently obtained documents proving that this is true.

The website "Offbeat Bride" identifies AMM as a business that pays Offbeat Bride a fee for Offbeat Bride to advertise AMM's goods and services. (Declaration of Michael P. Matesky, II, submitted herewith, at ¶ 3, Ex. A.) AMM's late-produced Slack and Pivotal Tracker documents identify Offbeat Bride, The Knot, and two other third-party websites as containing quotes of text for "reviews" of AMM's services. (First Matesky Decl., Dkt. No. 24, ¶¶ 8-9, Ex. B at AMM000784, Ex. C at AMM000792.) The Knot is one of the third party websites that AMM explicitly cites in support of its summary judgment motion. (Stephens Decl., Dkt. No. 21, ¶ 7, Ex. F at AMM000734). Thus, all available evidence demonstrates that AMM's summary judgment motion cites to third party websites that AMM pays to publish sponsored content, and is claiming these websites are simply organic third-party uses of the term "get ordained." It

would be grossly unjust to deny ULC Monastery the opportunity to take discovery regarding AMM's influence on the content of such third-party websites simply because AMM withheld the evidence of this "sponsored content" relationship until after the close of discovery.

Similarly, ULC Monastery should be allowed to take limited discovery into AMM's own calculated use of the term "get ordained" to support its summary judgment motion. In opposition to ULC Monastery's motion for additional discovery, AMM claims that it never relied on its own use of the term "get ordained" in support of its summary judgment argument. (Dkt. No. 25 at 8.) This is false. AMM refers to its own use of "get ordained" in its motion for summary judgment. (Dkt. No. 21 at 6.) AMM submitted screen captures of its own website that include the term "get ordained" in text (Stephens Decl., Dkt. No. 21, ¶ 7, at AMM000682-83) and cites to such screen captures in support of its motion (Mot., Dkt. No. 21, at 7). AMM also submitted a declaration from its executive director using the term "get ordained" in support of its motion. (King Decl. Dkt. No. 21, ¶¶ 6-7.) AMM may now wish to "take back" its claims and purported evidence regarding its own use of the term "get ordained," but it cannot unmake the record. Having relied on such use in support of its motion, ULC Monastery is entitled to limited additional discovery regarding AMM's late-produced documents that show calculated use of the term "get ordained" to support its legal theory.

III. CONCLUSION

For the reasons stated above, ULC Monastery respectfully requests that the Board grant its motion for limited additional discovery, and grant leave for ULC Monastery to (1) serve five additional requests for production of documents on AMM, (2) serve five additional interrogatories on AMM, and (3) depose AMM and each individual who sent or received any communication identified in AMM's late-produced documents, for a total of no more than 8 hours of deposition time.

DATED: May 13, 2019

Respectfully submitted:

MATESKY LAW^{PLLC}

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Reply in Support of Motion to Re-Open Discovery to Respond to Motion for Partial Summary Judgment, and the supporting Declaration of Michael P. Matesky, II and exhibits thereto, on AMM's counsel of record by email transmission to nancy.stephens@foster.com, pursuant to Trademark Rule §2.119(b), 37 C.F.R. §2.119(b).

Dated: May 13, 2019

s/ Michael P. Matesky, II/
Michael P. Matesky, II

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AMERICAN MARRIAGE
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MONASTERY STOREHOUSE, INC.

Applicant.

Opposition No. 91237315

DECLARATION OF
MICHAEL P. MATESKY, II

I, Michael P. Matesky, II, declare as follows:

1. I am over 18 years of age and competent to testify in this matter.
2. I am and at all relevant times have been counsel for Applicant in this matter.
3. Attached hereto as Exhibit A are true and correct screen captures of the website available at <https://offbeatbride.com/become-a-minister-with-american-marriage-ministries/> as of May 13, 2019.

DATED: May 13, 2019

s/ Michael P. Matesky, II/

Michael P. Matesky, II

EXHIBIT A



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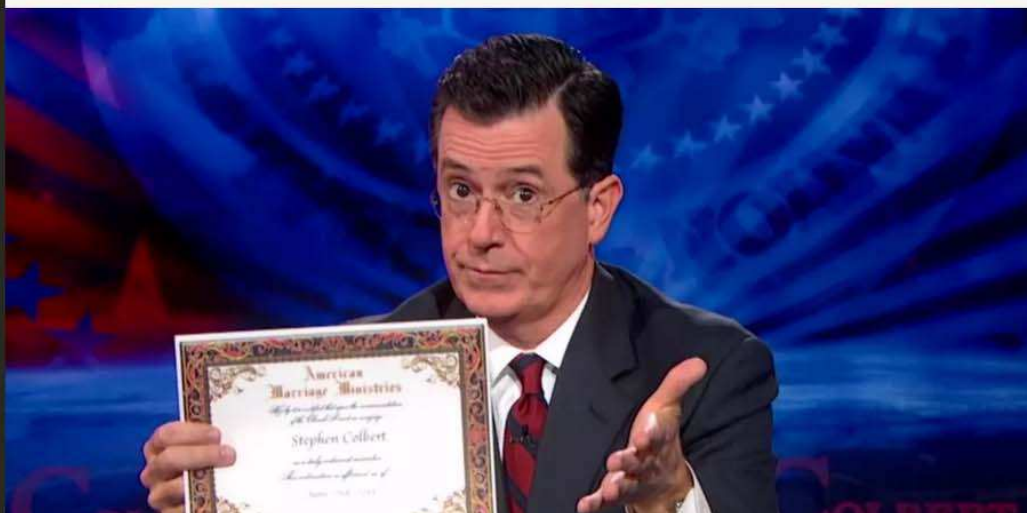
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ABOUT



Hey, I'm [Ariel](#), Seattle-based author of a book called *Offbeat Bride: Creative Alternatives for Independent Brides*. This blog is the ongoing celebration of couples who dare to walk off the beaten aisle.

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